IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 227 OF 2007

Shri Satywant K. Dessai,
Aged 33 years, Businessman,
H.No. 114, Gaowado Xelvon,
Curchorem, Goa. .... Applicant

V/s.

1. S T A T E
Through the Public Prosecutor

2. Police Inspector,
Curchorem Police Station. .... Respondents

Mr. Arun Bras De Sa, Advocate for the Applicant.
Mr. C.A. Ferreira, Public Prosecutor for the Respondents.

CORAM : N.A. BRITTO, J.

DATE : 19th OCTOBER, 2007

ORDER :

Heard Shri Arun Bras De Sa, the learned Counsel on behalf of the Applicant and Shri C.A. Ferreira, the learned Public Prosecutor on behalf of the Respondents.

2. Apprehending his arrest, the applicant herein has approached this Court for anticipatory bail. Earlier, his application dated 5/09/2007 for anticipatory bail came to be rejected by the learned Sessions Judge, Margao, by order dated 17/09/2007.

3. The applicant herein is sought to be arrested in connection with the investigations of Crime No. 12 of 2006 of Curchorem Police Station. The said crime came to be registered upon a complaint of Bernad Rodrigues on 16/02/2006 and with the allegation that one unidentified person with black jacket and a blanket fired a gun shot from a close range at Mariano Mascarenhas while the latter was having a drink at Rafaela Bar and the first informant was sitting at the entrance of the bar, and, thereafter fled away with the firearm along with the accomplice on a motorcycle who was waiting outside the bar. The said crime has been registered under Sections 450, 307 r/w 34 I.P.C. It appears that initially no much progress was made by the police in the investigations of the said case.

4. Subsequently, another crime came to be registered under no. 198/2007 under Sections 363, 302, 201 r/w 34 I.P.C. at Ponda Police Station in relation to the murder of one Sameer Mapari in which one Rajesh Dessai, Balesh Dessai and Vinay Dessai were arrested and interrogated and during the said interrogation it was stated that they were involved in Crime No. 12/2006 of the respondent/Curchorem Police Station and accordingly their custody was transferred. It is the case of the respondents that during the custodial interrogation of said Balesh Dessai it was revealed that motorcycle bearing no. GA-02-Q-3518 was used by the applicant herein to flee away from the scene of crime along with Shri Krishna Dessai, then a police constable, who

had shot the victim Mariano Mascarenhas. The said motorcycle belonged to Vishal Hodarkar and was secured by the said Balesh Dessai through the said Vinay Dessai 2 or 3 days prior to the incident. In short, the respondents believe that it is the applicant herein who carried to and fro the said Krishna Dessai to shoot the said Mariano Mascarenhas. It appears that the jacket worn by the said Shri Krishna Dessai is already attached but the helmet used by the applicant and the weapon used by the said Shri Krishna Dessai are required to be seized. The said Krishna Dessai has implicated the present applicant in his statement recorded and it is submitted that the presence of the applicant is necessary for custodial interrogation for the purpose of recovering the said articles.

5. Counsel on behalf of the the applicant submits that there is no prima facie material to arrest the applicant herein. Counsel further submits that the Investigating Officer has stated the facts in the remand application dated 6/09/2007 which are inconsistent with the reply filed before this Court. Learned Counsel on behalf of the applicant submits that in the said remand application it was stated that the weapon was returned to the said Rajesh Dessai and now it is stated that the said weapon is still with the applicant or the applicant knows where the said weapon is kept and for which custodial interrogation of the applicant is required. Learned Counsel further submits that a statement of the co-accused is inadmissible for the purpose of arresting

the applicant. Learned Counsel has further submitted that the applicant's name does not figure in the first information report filed by the said Bernard Rodrigues.

6. Contending that custodial interrogation is quantitatively superior in unearthing a crime and relying on the case of ***State rep. by the CBI V/s. Anil Sharma (1997 (7) SCC 187)*** learned Public Prosecutor submits that the presence of the applicant is necessary in police custody to find out the weapon as well as the helmet used and further to throw light on other aspects of the case. Learned Public Prosecutor submits that the investigating agency had prima facial material to justify the arrest of the applicant.

7. Admittedly, the applicant is involved in a serious offence and that is one of the factors to be considered by the Court while considering the anticipatory bail application. Another factor which requires to be noted is the presence of the accused in custody for the purpose of investigations. Yet another factor which is also required to be taken note of is whether the accusations has been made against the applicant with the object of injuring or humiliating the applicant by having him so arrested.

8. There is no doubt that the first information report was lodged against an unknown person and subsequently the injured Mariano Mascarenhas had

strongly suspected one Rajesh and Balesh Dessai but initially nothing came out from the said suspicion. The case of ***Sultan Khan V/s. State of Maharashtra (2001 ALL MR (Cri.) 326)*** stood on its own facts and is of no assistance to the case of the applicant. Likewise the other two cases of ***Mahipati Bapu Bandgar V/s. State of Maharashtra (2002 ALL MR (Cri.) 565)*** wherein the Court had observed that it should not be impressed by a surmises and conjectures and so also the case of ***Aatif Nasir Mulla V/s. State of Maharashtra (2006 Cri. L.J. (NOC) 140 (BOM.)*** wherein it was held that confessional statement of co-accused cannot be taken into consideration while considering bail application of accused.

9. The fact that the applicant's name does not find a place in the first information report cannot be a circumstance favouring the applicant more so when no names at all are found on the said first information report which was given against an unknown person. When crimes are committed in a planned manner, like in this case, certainly no names can be given in the first information report. All that it required to arrest a person is that there should be credible information or reasonable suspicion of such a person having been concerned in a cognizable offence, as set out in Section 41 of the Code of Criminal Procedure, 1973. The prohibitions contained in the Evidence Act making certain statements inadmissible in evidence will have no relevance at the stage of investigations.

10. As stated by the Apex Court in ***Adri Dharan Das V/s. State of W.B. (2005 (4) SCC 303)***, ordinarily arrest is a part of the process of investigations intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation commission and aftermath of the crime and connection of other persons, if any, in the crime and there may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, and to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation and the legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The Court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence.

11. Considering that a co-accused has sufficiently implicated the applicant in the commission of the crime, in which custodial interrogation would be necessary to unearth several aspects relating to the said crime including the recoveries, as already noted herein above, this is not a fit case to admit the applicant to anticipatory bail.

12. Application therefore is hereby rejected.

N.A. BRITTO, J.

NH/-